



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

COASTAL RESOURCES MANAGEMENT COUNCIL

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In accordance with notice to members of the Rhode Island Coastal Resources Management Council's Planning and Procedures subcommittee, a meeting of the subcommittee was held on Tuesday, February 22, 2007 at 9:30 a.m. at CRMC, Stedman Government Center, 4808 Tower Hill Road, Wakefield, RI.

**MEMBERS PRESENT**

Michael M. Tikoian, Chair  
Paul E. Lemont, Vice Chair  
Dave Abedon  
Bruce Dawson  
W. Michael Sullivan, DEM  
Donald Gomez

**STAFF PRESENT**

Grover Fugate, CRMC Executive Director  
Jeff Willis, Deputy Director  
Laura Ricketson, Public Education & Outreach Coordinator  
Entire CRMC staff  
Brian Goldman, Legal Counsel

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**Call to Order.** Mr. Tikoian called the meeting to order at 9:30 a.m.

Mr. Tikoian thanked the subcommittee for altering their schedules to meet with the entire Council staff at the Wakefield office during working hours, in order to facilitate and engage with them specific agenda items.

Mr. Tikoian asked for a motion to approve the subcommittee's January 16, 2007 meeting minutes.

*Mr. Lemont, seconded by Mr. Sullivan, moved to approve the January 16, 2007 meeting minutes.*

Mr. Abedon noted that an error was contained in the minutes in that he was not in attendance at the meeting, yet his presence was noted to be. Mr. Abedon asked that the minutes be revised to reflect this. Staff was directed to revise the meeting minutes accordingly.

*Mr. Tikoian asked for a vote to approve the minutes as so noted. All voted in favor of the motion.*

Mr. Tikoian asked staff to introduce themselves.

**Item 3.A – Section 300.18 Submerged Aquatic Vegetation.** J. Willis presented the proposed changes to the subcommittee and explained a brief history of them: they are the result of work undertaken by an SAV work group that was put together at the request of the subcommittee to look into making the SAV regulations more comprehensive and to develop prohibitive policies when structures such as docks are too long when attempting to span an eelgrass bed to reach suitable water depths. This group consisted of council staff, DEM and federal agencies, and Save the Bay.

J. Willis explained that the proposed revisions provide more detailed findings, specify programmatic survey standards, re-order existing sections for better logic/placement, and, prohibit residential docks over SAV when their length becomes an issue. The subcommittee was in agreement on the prohibition to docks over SAV.

Director Sullivan then noted that he would prefer to address historic areas and restoration areas as well such that a minimization of impacts and conflicts regarding SAV is made. G. Fugate agreed and stated that these areas should be mapped and prohibitive policies be developed to address these areas, but also asked that the subcommittee consider approving these proposed changes and then directing staff to address Dir. Sullivan's position and future revisions to the section.

*Director Sullivan, seconded by Mr. Dawson, moved to approved the proposed changes as written. Director Sullivan then moved to revise this motion by adding to it that staff also be directed to map SAV areas for their historic and potential restoration properties and develop proposed changes that address this. The revised motion was seconded by Mr. Lemont. All voted in favor of the motion.*

**Item 4.A – Section 300.4 Recreational Boating Facilities.** D. Goulet presented the proposed changes to the subcommittee stating that except for those pertaining to fetch they were technical and/or clarifications such that they became consistent with other existing or recently revised sections of the program. These included revisions to how the regulations would reference an engineering manual, and the requirement to use state plane coordinates NAD83 and metes and bounds. Other revisions included references to clarify that marinas in Type 2 waters which propose to be altered shall have all in-water and dry stack vessels count toward any increase in capacity for expansion issues; property line extensions are to be prepared by an RLS; and proposed docks are now to be geo-referenced using GPS on the state plane coordinate system.

With regard to issues of excessive fetch, D. Goulet stated that terminal floats in areas of excessive fetch can seek a variance up to 200 square feet but such requests will be heard by the full council; what constitutes excessive fetch was established; and that docks will now be required to be certified by the designer as built according to their approved designs.

*Mr. Lemont seconded by Mr. Dawson moved to approve the revisions to Section 300.4 as written. All voted in favor of the motion.*

**Item 5.A – Staff Report Recommendations.** G. Fugate presented the issues associated with staff report recommendations. He briefly described three options preferred by staff: No Objection; Defer (to the Council); and, Denial. He stated how most staff prefer not to use an Approval recommendation because there is always some impact to the environment from any activity. However, staff would feel comfortable using an Approval recommendation for habitat improvement and restoration-related projects. D. Reis elaborated.

Mr. Tikoian asked the members for input. Mr. Lemont stated that an Approval recommendation is appropriate in any circumstance because it lets him know as a decision-maker that the staff has assessed the request and is confident in their position.. He also stated that he will need convincing to not use the Approve recommendation.

Mr. Abedon asked for an example of a Defer recommendation. G. Fugate cited examples such as policy interpretation, or when in staff's opinion an activity's impact has not been minimized but the applicant feels it has.

Mr. Dawson noted that he is ok with the No Objection recommendation as it is consistent with municipal practices such as that of North Kingstown.

Mr. Tikoian asked in instances when staff and supervisor differ, what happens. G. Fugate explained that he becomes the conflict resolver.

T. Silvia stated that staff is looking for clear direction on what each type of recommendation means so that applicability is consistent across the board.

Mr. Tikoian described that Category A applications are essentially handled by staff as delegated by the council, as this is how the program was adopted procedurally. He also stated that Category B applications require clear staff recommendations as programmatically these are handled by the full council. Mr. Abedon stated that the council is ultimately the responsible body. Mr. Tikoian stated unless delegated. Mr. Tikoian stated that the staff role contains the right to offer a recommendation to the full council. T. Silvia agreed and noted that the recommendation is not a decision therefore a recommendation of No Objection is more proper.

T. Motte noted that almost always there are biological impacts from a permitted activity and therefore the basis from which to develop recommendations should be No Objection and Objection. He also stated that it has always been that an Approval recommendation is reserved for public and restoration projects. Mr. Lemont asked if the biologists ever disagree. T. Motte stated that yes but not in a vacuum; supervisors and executive director get involved at that point. D. Reis commented that past practice and institutional memory are very important when making recommendations.

A. Silva stated that while the ultimate decision rests with the council, especially when there are issues regarding variances and hardship, she is more comfortable using No Objection or Objection.

Mr. Tikoian asked whether a No Objection or Defer recommendation weakens an argument. He feels that an Approval recommendation makes a position stronger.

Mr. Lemont stated that he seeks staff expertise input when weighing his actions on an application and therefore feels their recommendation carries quite a bit weight.

T. Silvia reiterated her position on needing clear definition as to what each recommendation means.

B. Goldman explained when he writes decisions for the council he uses Consistent and Not Consistent when discussing the application's issues. These are terms used in court.

S. Feeley stated that all programmatic impacts are discussed in depth in staff reports and that the actual recommendation is less important than the body of the staff report, which carries the most weight. He continued and was joined by M. Deveau in stating that staff reports can give alternatives and options that were offered to an applicant and that these sections of the report carry much weight for decision-making.

D. Alves noted that he is comfortable using an Approval recommendation when in his opinion an application has met programmatic requirements. He feels that the staff role is to make a recommendation one way or the other (Approve/Deny) because the council is the decision-maker and he is only providing them with a recommendation. D. Goulet noted agreement.

D. Reis stated that the program needs to be recognized vis-à-vis best professional judgment. Staff needs to find a balance and play their role and offer a strong recommendation to the council.

Dir. Sullivan explained that maybe the recommendations can be Consistent and Not Consistent but that the staff reports need to contain a laundry list as to why the recommendation is such. D. Reis felt that this position may make it difficult to discuss variance requests. Dir. Sullivan stated that staff reports should be devoid of personal professional opinion. They should stick to the program requirements and professional experience.

*Mr. Lemont moved to have staff develop a detailed recommendation proposal. There was no second.*

Mr. Gomez stated that staff recommendations are part of the decision-making process – not the whole process. He is ok with No Objection and Objection and noted that the council makes the ultimate approval/denial decision.

Mr. Dawson is ok with past practice and precedent and has issues with Approval/Denial as staff recommendations.

Dir. Sullivan brought up the issue of addressing cumulative impacts and noted that if staff is directed to further work on this issue, that he would insist that a very detailed recommendation report comes back that also addresses cumulative impacts. Mr. Abedon noted that cumulative impacts are a variable to consider but that science doesn't necessarily back the issue that well. Dir. Sullivan disagreed.

*Mr. Lemont moved, seconded by Mr. Abedon, to develop detailed recommendations that contain definitions for each and criteria under which each is used, to be brought back for subcommittee consideration at the next meeting. Dir. Sullivan asked if this motion included addressing cumulative impacts. Mr. Lemont stated no but that he would support a separate motion that did. A voice vote was taken and **the motion carried** with Mr. Dawson and Dir. Sullivan voting against the motion.*

*Dir. Sullivan moved, seconded by Mr. Lemont, to direct staff to programmatically address cumulative impacts and introduce such throughout the program for subcommittee discussion. This work would be given 60 days to complete. **All voted in favor of the motion.***

**Item 5.B – Residential Lot Sizes v. structure sizes.** G. Fugate presented the issues associated with this agenda item such as when an applicant has not minimized an activity such that program requirements cannot be met, but if they did so could then meet the program requirements. He offered as examples to illustrate the point the size of houses. Applicants often propose houses that can be made smaller and pose no programmatic issues, but left as proposed may require the altering of a wetland, for example. These are examples where staff defers to the council. D. Reis presented examples where house designs are available commercially that are specifically for small footprint lots. T. Silvia explained difficulty in reviewing applications for existing houses where a proposed addition is larger than the existing house. Dir. Sullivan offered that performance standards in association with maximum lot coverage may be one option worth exploring to address impacts, which was discussed by the subcommittee.

Mr. Gomez suggested that staff research all municipal zoning regulations and look to see which areas may be problematic. Then we could also offer the municipalities to address these issues as well.

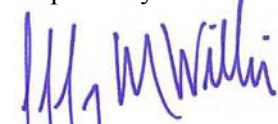
*Director Sullivan moved, seconded by Mr. Lemont and Mr. Gomez, to have staff develop a maximum lot coverage regulation that also looks at performance standards. This work would be given 90 days to complete. **All voted in favor of the motion.***

**Item 4.B – Narrow River SAMP Land Use Classification.** This item was not discussed.

**NEW BUSINESS.** Director Sullivan stated that due to the success of marine debris clean-up of late undertaken by the group Clean the Bay, he would like to have placed on the next available agenda the issue of dock branding/marketing. Chairman Tikoian directed staff to place this item on the next available meeting agenda.

**ADJOURNMENT.** Mr. Lemont, seconded by Dir. Sullivan, moved to adjourn. All voted in favor of the motion, and the meeting was adjourned at 11:46 a.m.

Respectfully submitted by



Jeffrey M. Willis  
Deputy Director